

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the General Services Administration (collectively, the "United States"), Axway, Inc. ("Axway"), and qui tam relator Kenneth Marcus (hereinafter the "Relator") (hereinafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Axway is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 6811 East Mayo Boulevard, Suite 400, Phoenix, Arizona, 85054.

B. On October 3, 2001, the United States, acting through the General Services Administration ("GSA"), awarded to Valicert Inc. ("Valicert") Multiple Award Schedule Contract No. GS-35F-0009M for the sale of software licenses and related services (hereinafter "the MAS Contract"). In October 2003, Valicert merged with Tumbleweed Communications Corporation ("Tumbleweed") and, on December 8, 2004, the GSA approved the novation of the MAS Contract to Tumbleweed, as a successor-in-interest to Valicert. In December 2008, Tumbleweed merged with Axway, Inc. and, on July 8, 2009, the GSA approved the novation of the MAS Contract to Axway, as a successor-in-interest to Tumbleweed.

C. After the MAS Contract was put in place in 2001, and through and including December 31, 2011, the United States made purchases of products and services under the MAS Contract from Valicert, Tumbleweed, and Axway, and their resellers and/or made purchases of products and services under other contracts from Valicert, Tumbleweed, and Axway, and their resellers, which the United States alleges were influenced by the MAS Contract.

D. On April 21, 2008, Relator filed a *qui tam* action under seal in the United States District Court for the District of Maryland captioned *United States ex rel. Kenneth Marcus v. Tumbleweed Communications Corp.*, DKC-08-1006, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (hereinafter “the Civil Action”).

E. The United States contends that Valicert, Tumbleweed, and/or Axway knowingly failed to provide the GSA with current, accurate and complete pricing information concerning their respective sales of software licenses and related services (including maintenance and maintenance renewals) during the negotiation of the MAS Contract, during negotiations regarding extensions of the MAS Contract, and/or during the performance under the MAS Contract, and failed to comply with the Price Reduction Clause of the MAS Contract. As a result, the United States contends that Valicert, Tumbleweed, and/or Axway knowingly submitted, or caused to be submitted, false claims for payment to the United States pursuant to the MAS Contract or other federal government contracts under which its products or services were purchased during the period from October 3, 2001 through and including December 31, 2011, and that the United States has incurred damages as a result. The conduct alleged in this Paragraph is referred to herein as the “Covered Conduct.”

F. The United States contends that it has certain civil claims against Axway arising from the Covered Conduct.

G. The Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to his reasonable expenses, attorneys’ fees and costs.

H. This Settlement Agreement is made in compromise of disputed claims, and is neither an admission of liability by Axway, nor a concession by the United States that its claims are not well founded. Axway expressly denies each and every one of the contentions and claims

of the United States included in the Covered Conduct, and expressly denies that Axway engaged in or has engaged in any wrongful conduct in connection with the Covered Conduct.

Now therefore, to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and without admission of fault or wrongdoing, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. In settlement of the claims arising from the Covered Conduct, Axway shall pay to the United States \$6.2 million and accrued interest on any outstanding balance at an annual rate of 2.125% starting from the Effective Date of this Agreement (hereinafter the "Settlement Amount") by electronic funds transfer pursuant to written instructions to be provided by the Office of United States Attorney for the District of Maryland, no later than 20 days after the Effective Date of this Agreement.

2. In addition to agreeing to pay the Settlement Amount in Paragraph 1 above, Axway agrees to execute a Stipulation for Consent Judgment whereby it agrees, among other things, that if there is a default by it in the payment of its portion of the Settlement Amount and a failure to timely cure that default within ten (10) days of written notice by the United States, Axway agrees to have judgment entered against it as to the remaining unpaid balance of the Settlement Amount, plus annual interest at 5% on the balance due at the time of default, and plus all reasonable costs of collection, including attorneys' fees and expenses, that are incurred, but no more than fifteen percent (15%) of the total amount owed at the time of the default. The Stipulation for Consent Judgment will be executed by Axway at the same time that the

Settlement Agreement is executed and will be maintained at the United States Attorney's Office in the District of Maryland.

3. Axway agrees to pay the Relator's fees, expenses, and costs, in the amount of \$102,084 pursuant to 31 U.S.C. § 3730(d) incurred in connection with the Civil Action, to Relator's counsel by electronic funds transfer pursuant to written instructions to be provided by Relator's attorney. No additional attorney's fees and costs shall be paid or claimed by the Relator or his counsel.

4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon Axway's full payment of the Settlement Amount, the United States fully and finally releases Axway, Tumbleweed, and Valicert together with their current and former parent corporations; subsidiaries; current or former owners; and officers, directors, and employees; and the successors and assigns of any of them, from any civil or administrative monetary claim(s) the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101-7109; the Truth in Negotiations Act, 41 U.S.C. § 254b; and/or the common law theories of breach of contract, payment by mistake, unjust enrichment, and/or fraud.

5. Conditioned upon Axway's full payment of the Settlement Amount set forth in Paragraph 1 above, and the payment in Paragraph 3 above, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases Axway, Tumbleweed, and Valicert, together with their current and former parent corporations, affiliates, and subsidiaries; current and former owners, directors, officers, employees, representatives, and agents, and the successor and assigns of any of them, from any and all causes of action, in law or in equity, suits, debts, liens, contracts, agreements, covenants, promises, liability, obligations, claims, demands,

rights of subrogation, contribution and indemnity, damages, loss, cost or expenses, direct or indirect, of any kind or nature whatsoever (including without limitation any claims under the False Claims Act, 31 U.S.C. §§ 3729, et seq.), or any legal theory that was or could have been alleged in the Civil Action, known or unknown, fixed or contingent, state or federal, under common law, statute or regulation, liquidated or unliquidated, claimed or concealed, and without regard to the date of occurrence, which Relator ever had, now has, may assert, or may in the future claim to have, against Axway by reason of any act, cause, matter or thing whatsoever from the beginning of time to the date hereof.

6. Notwithstanding the releases given in paragraphs 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any non-monetary administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due; and

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. The Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement. The Relator and his heirs, successors, attorneys, agents, and assigns agree and confirm that the terms of this Agreement, including the Settlement Amount, are fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

8. Conditioned upon the United States receiving the Settlement Amount described in Paragraph 1 above, the United States shall pay to Relator a share of the Settlement Amount received as follows: Relator shall be paid by the United States \$1,178,000 as soon as feasible following the United States' receipt of the payment described in Paragraph 1 above. In addition to the payment described in this Paragraph, to the extent Axway pays any interest on the Settlement Amount sum listed in Paragraph 1, Relator shall receive a pro rata share of any such interest payment as soon as feasible following its payment by Axway to the United States.

9. Conditioned upon the Relator receiving the payment described in Paragraph 3 above, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, fully and finally releases Axway and its officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

10. Axway waives and shall not assert any defenses Axway may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Settlement Agreement bars a remedy sought in such criminal prosecution or administrative

action. Nothing in this paragraph or any other provision of this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

11. Axway fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Axway has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

12. Subject to the filing of an executed copy of the Stipulation of Dismissal attached as Exhibit 2 hereto with the United States District Court, Axway (including its predecessors Tumbleweed and Valicert) fully and finally releases the Relator, his agents, assigns, and counsel from any and all causes of action, in law or in equity, suits, debts, liens, contracts, agreements, covenants, promises, liability, obligations, claims, demands, rights of subrogation, contribution and indemnity, damages, loss, cost or expenses, direct or indirect, of any kind or nature whatsoever (including without limitation any claims under the False Claims Act, 31 U.S.C. §§ 3729 et seq.), known or unknown, fixed or contingent, state or federal, under common law, statute or regulation, liquidated or unliquidated, claimed or concealed, and without regard to the date of occurrence, which Axway ever had, now has may assert or may in the future claim to have against Relator, his agents, assigns or counsel by reason of any act, cause, matter or thing whatsoever from the beginning of time to the date hereof, including, but not limited to, claims arising out of, based upon, or relating to the Civil Action or the prosecution thereof.

13. Relator acknowledges, agrees, and covenants that he shall not make any public disparaging statements, comments, or communications concerning Axway, its officer, directors,

employees, attorneys, agents, or its business or operations (collectively "Axway agents"). Axway acknowledges, agrees, and covenants that Axway agents shall not, within the scope of their authority, make any disparaging statements, comments, or communications regarding the Relator either publicly or privately to third parties. This mutual non-disparagement covenant applies to any public statements, comments, or communications in any form, whether oral, written, or electronic. Axway and Relator further agree that they will not in any way solicit any such statements, comments, or communications; provided however, that this mutual non-disparagement agreement shall not in any way prevent Axway and Relator from disclosing any information to their attorneys or in response to a lawful subpoena or court order requiring disclosure of information. Moreover, this mutual non-disparagement agreement shall not in any way restrict Axway or its agents from making any statements to its business advisors, parent, or Board of Directors, and nor shall it in any way restrict Relator from making truthful statements responding in response to unsolicited questions put to him regarding his role in this matter.

14. This Agreement is intended to be for the benefit of the Parties only.

15. On the Effective Date of this Agreement or any date thereafter, the United States shall file in the Civil Action a Notice of Intervention attached as Exhibit 1 hereto as to the Covered Conduct. Upon receipt of the payment described in Paragraph 1 above, the United States and the Relator shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal attached as Exhibit 2 hereto.

a. The stipulation of dismissal shall be with prejudice as to the United States' and Relator's claims as to the Covered Conduct and consistent with the terms and conditions of this Agreement;

- b. The stipulation of dismissal shall otherwise be without prejudice as to the United States and with prejudice as to Relator as to all other allegations set forth in the Civil Action.

16. Except as otherwise expressly provided in 31 U.S.C. § 3730(d) and in this Settlement Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Maryland. For purposes of construing this Settlement Agreement, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Settlement Agreement constitutes the complete agreement between the Parties. This Settlement Agreement may not be amended or terminated except by written consent signed by all of the Parties.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Settlement Agreement on behalf of the persons and entities indicated below.

21. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Settlement Agreement is binding on Axway's successors, transferees, heirs, and assigns.

23. This Settlement Agreement is binding on Relator's successors, transferees, heirs, and assigns.

24. The Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

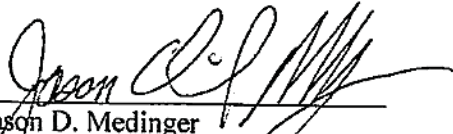
25. This Agreement is effective on the date of signature of the last signatory to the Agreement (the "Effective Date of this Agreement"). Facsimiles or scanned copies of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

[signatures appear on the following page]

ON BEHALF OF THE UNITED STATES OF AMERICA


Rod J. Rosenstein
United States Attorney
District of Maryland

DATED: 10/23/13


BY: 
Jason D. Medinger
Michael A. DiPietro
Assistant United States Attorneys
District of Maryland

ON BEHALF OF AXWAY, INC.

DATED: 16 Oct 2013

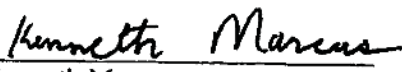
BY: 
Patrick Donovan
Chief Financial Officer
Axway, Inc.

DATED: 10/17/2013


BY: 
Thomas P. Barletta
Paul R. Hurst
Steptoe & Johnson LLP
Counsel for Axway, Inc.

ON BEHALF OF THE RELATOR

DATED: 10/23/2013

BY: 
Kenneth Marcus
Relator

DATED: 10/22/13

BY: 
Andrew Grosso
Andrew Grosso and Associates
Counsel for Relator